IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 306 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LALJIBHAI SHIVSHANKER TRIVEDI

Versus

STATE OF GUJARAT

Appearance:

MR JB PARDIWALA for Petitioner

MR KC SHAH, APP for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/10/2000

C.A.V.JUDGEMENT

#. In this revision, the order dated June 26, 2000 of the Special Judge, Junagadh is under challenge. In the impugned order, the learned Special Judge has rejected the application of the accused/revisionist for dropping

the proceedings against him, on the ground that, the sanction for prosecution is invalid because, it was not granted by the appointing Authority who is competent to order his dismissal.

#. The brief facts giving rise to this revision are that, the revisionist is being prosecuted on charges under secs.7, 13(1)(d) read with sec.13(2) of the Prevention of Corruption Act, 1988. The impugned order shows that, the charges under the aforesaid sections have been framed against the accused/revisionist.

#. Afterwards he moved an application that, since the sanction to prosecute him is illegal, the case under the Prevention of Corruption Act may be dropped in view of sec.19 of the Prevention of Corruption Act. In short, the contention of the revisionist in the lower Court was that, the sanction for prosecution under sec.19(1) of the Prevention of Corruption Act (for short, the Act) was granted by the Deputy District Development Officer, who is subordinate in rank to the District Development Officer who is actually the appointing Authority. The sanction is vitiated and is invalid, hence the proceedings against the revisionist are liable to be dropped.

#. Considering the respective contentions of the two sides viz. the prosecution and the defence, the learned Special Judge found that; firstly, there was no invalidity in the sanction and secondly the alleged invalidity amounts to mere irregularity, and since, it could not be proved that the irregularity has occasioned failure of justice to the accused, the sanction is not liable to be struck down, nor it can be said to be illegal. As a consequence thereof, it was found by the learned Special Judge that the proceedings against the revisionist can not be dropped. With these findings, the application of the revisionist was rejected. Hence, this revision.

#. Shri JB Pardiwala, learned counsel for the revisionist and Shri KC Shah, learned APP have been heard at length.

#. Shri Pardiwala has assailed the validity of the sanction on the ground that, it was not granted by the authority who is competent to appoint and order removal of the revisionist from service; rather, the sanction was granted by an officer who is subordinate to the actual appointing Authority namely, the Deputy District Development Officer who is subordinate to the appointing

Authority/District Development Officer hence, the sanction is illegal and invalid. He also argued that the learned Special Judge had fallen in error in considering the provisions of sec.19(3) of the Act by holding that, the sanction can not be invalidated on the ground of mere irregularity. The next contention has been that, secs.19(1) and 19(3) operate in different compartments and the two sections can not be amalgamated. Shri Pardiwala has also referred, in support of his contention, the cases of Vinod Lal v. State of H.P. 1995 Cri.L.J. p.2603, Ram Krishan Prajapati v. State of U.P. S.C.C. 2000 p.687 and Gopalbhai Mohanbhai Nagoda v. State of Gujarat 34(2) GLR P.1238. He has also tried to interpret secs.19(1) and 19(3) of the Act, in the manner that, the two sections operate in different compartments and once it is found that the sanction granted by the Deputy District Development Officer is invalid, the proceedings were liable to be dropped and the trial of the revisionist could not have proceeded.

#. Shri KC Shah, learned APP, on the other hand, contended that cognizance was rightly taken by the learned Special Judge acting under sec.19(1) of the Act, and at that time, the learned Special Judge could not have examined the validity or invalidity of the sanction. All that was required of the Special Judge at that time was to satisfy him that the sanction was granted for prosecution of the accused/revisionist. And, if any invalidity in the sanction is alleged, it has to be decided after evidence is recorded and not at this stage. He also contended that evidence is required for consideration. Whether the sanction granted by the Authority is actually invalid, as contended by Shri Pardiwala ? According to Shri KC Shah, the impugned order is perfectly justified and legal, hence it requires no interference.

#. So far as the cases cited by Shri Pardiwala are concerned, I feel that all the cases are distinguishable on facts.

#. In Vinod Lal v. State of H.P (supra), the facts were altogether different. In this case, no doubt, prima facie case was made out against the accused for prosecution under the Prevention of Corruption Act but, sanction for prosecution was refused by the competent Authority. Thus, it was a case where sanction was refused by the competent Authority and still cognizance of offence was taken by the trial Judge. It was on this fact held that, since cognizance was taken without sanction for prosecution of the accused, the action of

the trial Judge was without jurisdiction. No doubt, in this case, the provisions of secs.19(1) and 19(3) of the Act were highlighted, yet the case is distinguishable because, once the sanction for prosecution was refused by the competent Authority by a fiction of law, it will be deemed that cognizance was taken by the Judge without any sanction for prosecution. Obviously, in that case, there was violation of provision of sec.19(1) of the Act. In this case, provisions of sec.19(3) were also considered and it was held that there is no absolute bar before the revisional or the appellate Court in refusing to interfere with the order of the learned Special Judge on grounds that the invalidity of sanction has not occasioned failure of justice. As discussed above, this case is distinguishable on the sole point that, in this case, cognizance was taken without sanction; rather, sanction was refused by the competent Authority. In the case before me, sanction was granted for prosecution of the revisionist by the Deputy District Development Officer.

##. The distinction of the remaining two cases cited by Shri Pardiwala will be discussed later on when the facts of this case are considered for a limited purpose, as to who was the appointing Authority of the revisionist. Before discussing these two cases, it has to be seen, what is the scope of secs.19(1) and 19(3) of the Act. Sec.19(1) of the Act interalia provides that, "No court shall take cognizance of an offence punishable under secs.7, 10, 11, 13 and 15 alleged to have been committed by a public servant except with the previous sanction (a) in case of any other person of the Authority competent to remove him from his office."

##. From the impugned order, it is clear that, interalia charges have been framed against the revisionist under secs.7, 13(1)(d) and 13(2) of the Act. As seen above, cognizance could not be taken by the Special Judge without previous sanction of the Authority competent to remove the revisionist from his service. The bar under sec.19(1) of the Act is, therefore, only for the purpose of taking cognizance. At the time of taking cognizance, the accused/revisionist had no say, nor any objection was raised at the time of taking cognizance by the Special Judge that the sanction is invalid. If the Special Judge found that, the sanction was granted by the appointing Authority, he could legally take cognizance of the offence under sec.19(1) of the Act. At the time of taking cognizance, no dispute or doubt was raised as to who could be the appointing Authority or the competent Authority to grant sanction for prosecution of the

revisionist. Consequently, sec.19(2) of the Act was not attracted at the time of taking cognizance by the learned Special Judge. Even if, such doubt could have arisen, whether the previous sanction should be given interalia by the Authority which would have been competent to remove the public servant from his office, the sanction could have been given by the Authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed. Thus, the relevant factor for determination of doubt under sub-sec (2) of sec.19 is as to who was the Authority competent to remove the public servant from his office on the date of commission of offence.

##. Section 19(3) of the Act, on the other hand, provides that, notwithstanding anything contained in the Code of Criminal Procedure;
(a) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of absence of or any error, omission or irregularity in the sanction required under sub-sec(1), unless in the opinion of the Court failure of justice has been occasioned thereby.
(b) No Court shall stay the proceedings under this Act on the ground of absence of or any error, omission or irregularity in the sanction granted by the Authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice.

##. Sub sec.4 provides that, in determining under sub sec (3) whether the absence of or any error, omission or irregularity in such sanction has occasioned or resulted in failure of justice, the Court shall have regard to the fact, whether the objection could and should have been raised at any earlier stage in the proceedings.

##. Explanation of sub sec.4 provides that, for the purposes of this section "error" includes competence of the Authority to grant sanction.

##. Thus, from sub sec.3, whose relevant portion has been quoted above, it emerges that in the first place no finding, sentence or order passed by the Special Judge shall be reversed by the appellate Court or revisional Court, on the ground of absence of or any error, omission or irregularity in the sanction, unless in the opinion of Court, failure of justice has been occasioned thereby. There is a grey area in this section which has occurred on account of the word "absence of the sanction" but, this grey area does not render sub sec.3 invalid because,

under sub sec.1 of sec.19 cognizance is prohibited, unless sanction is obtained from the competent Authority. Thus, the finding and order cannot be sustained in those cases where no sanction has been obtained. But, if sanction has been obtained then, no finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court of appeal or revision on the ground of error, omission or irregularity in the sanction. The impugned order is certainly an order passed by the Special Judge under sec.19(3)(a) read with sec.19(1) of the Act. Consequently, in view of sec.19, which was subsequently incorporated in the Prevention of Corruption Act, 1988, interference in revision on the ground of error or irregularity in the sanction is not permissible, unless such error or irregularity has occasioned failure of justice. Nothing could be shown before me that the impugned sanction has occasioned failure of justice to the revisionist. According to sub sec.4 of sec.19 in determining, whether the absence of or any error, omission or irregularity in such sanction has occasioned or resulted in a failure of justice, the Court shall have regard to the fact that, whether the objection could and should have been raised at any earlier stage in the proceedings. It seems that, at the earlier stage of the proceedings no such objection was raised by the revisionist. Charges have already been framed by the learned Special Judge and it appears from the impugned order that, at the time of framing of charges no such objection was raised; rather, objection to the validity of the sanction was raised through a separate application after charges were framed. If such objection could have been raised at the time of framing of charges, certainly the Special Judge could have seen whether there is material for proceedings against the revisionist especially in view of the invalid sanction. But, since this plea was not raised at the time of framing of charge, the learned Special Judge had no option but to proceed with the trial, and once the charges have been framed and the trial proceeded, the trial can not be dropped simply on the strength of the application of this nature moved by the revisionist.

##. Shri Pardiwala contended that, in view of explanation to sub sec.4 of sec.19 the word "error" includes competence of the Authority to grant sanction, and in view of this, he argued that if the Authority granting the sanction was not competent to grant sanction, it amounts to error in the sanction and, as such the proceedings are liable to be dropped. On the face of it this contention can be accepted only when it is proved by the accused that, due to such error viz.

want of competence in the Authority to grant sanction, failure of justice has been occasioned. Interference in the sanction or in the order of the learned Special Judge at the interim stage is therefore not permissible.

##. Coming to the factual side, it is undisputed that the revisionist was appointed by the District Collector vide order dated September 3, 1956. Thereafter, by operation of law viz. consequent upon enforcement of Panchayat Raj Act, the revisionist was transferred to Panchayat Department and was posted as Talati-cum-Mantri. The rules of Panchayat Raj provide that, 'the Deputy District Development Officer has power to make appointment, so also the District Development Officer.' On these facts, it has to be seen whether the sanction accorded by the Authority viz. Deputy District Development Officer is invalid. According to Shri Pardiwala, since the Collector was the initial appointing Authority of the revisionist, and under Panchayat Raj Act and Rules, District Development Officer is officer equal in the rank of District Collector, he alone was competent to grant sanction, no matter, the Deputy District Development Officer was having concurrent powers to appoint and remove the revisionist. In support of this contention, he has referred to the Apex Court's verdict in Ram Krishan Prajapati v. State of U.P. (Supra). This case, to my mind, is distinguishable on facts. It was a case under sec.6 of the old Act.

##. The incident occurred on August 11, 1977, and at that time, the new Act of 1988 was not in force. On facts, it was found by the Apex Court that, the accused in that case was appointed as Clerk by the District Magistrate. Subsequently, he was granted promotion by the Commissioner of Civil Supplies Department and was posted as Supply Inspector. The offence was committed by him when he was posted as Supply Inspector. The sanction for prosecution was granted by the District Magistrate.

##. On these facts, the Apex Court held that, '...no doubt the accused was initially appointed by the District Magistrate as Clerk but, subsequently he was promoted as Supply Inspector by the Commissioner and this appointment, on promotion through a different source, could be deemed to be an appointment made by the Commissioner.' As such, the Commissioner was the only Authority who could accord sanction for prosecution of the accused. On these facts, it was further held that, the sanction for prosecution granted by the District Magistrate was illegal and invalid.

##. In the case before me, the facts are altogether different. As stated earlier, the revisionist was appointed initially by the District Collector on September 3, 1956. Thereafter, on account of enforcement of Panchayat Raj Act, he was transferred to Panchayat Department on the post of Talati-cum-Mantri. No fresh appointment was given to the revisionist either by the District Development Officer or by the Deputy District Development Officer. Under the Panchayat Raj Rules, the District Development Officer, as well as, the Deputy District Development Officer had concurrent powers of appointment and removal of Talati-cum-Mantri. Thus, by a fiction of law, after enforcement of Panchayat Raj Act, it would be deemed that both the officers viz. District Development Officer and Deputy District Development Officer were authorities competent to appoint and remove the revisionist on the date of commission of offence. If this was so, then it can not be said that, on the date of commission of offence, only the District Development Officer was actual appointing Authority of the revisionist. If, by operation of law, these two officers were competent to appoint and remove the revisionist from his office, they were competent to grant sanction and, if sanction was granted by any of them, it can not be said to be illegal and invalid even on the strength of pronouncement of the Apex Court in the case of Ram Krishan Prajapati v. State of U.P. (Supra). Shri Pardiwala then relied upon the case of Gopalbhai Mohanbhai Nagoda v. State of Gujarat (Supra). He has placed special emphasis upon Para 23 of this judgment, which is quoted below for ready reference :

"23. In view of the aforesaid authorities on the subject it is clear that a person cannot be removed from service by the authority who is subordinate in rank. Thus, in view of this, a person can be removed only by an appointing authority or an equivalent authority possessing the same power to that of the appointing authority. However, in cases, the authority subordinate in rank can remove or dismiss a person and if he causes or exercises such power, it is in patent violation of the provisions of Art.311(1) of the Constitution of India. Whether or not an authority is subordinate in rank to another has to be determined with reference to the state of affairs existing on the date of appointment. It is at that point of time that the constitutional guarantee under Art.311(1) becomes available. The subsequent authorization made in favour of the authority passing the order

> of removal in regard to making appointments to the post held by the appellant cannot confer upon him the power to remove him. In the instant case also the appointment of the appellant has been made by the District Development Officer on 21-7-1965 and it is undisputedly Deputy District Development Officer who is subordinate in rank to the District Development Officer, in the instant case could not have granted sanction because appointment was made by the District Development Officer. Even though the Deputy District Development Officer was holding the power of appointment (not brought on record), he cannot be termed as appointing authority in view of the facts that the appellant was appointed by District Development Officer who is undisputedly higher in rank to that of Deputy District Development Officer. In this view of the matter, we have to hold that the sanction granted by the Deputy District Development Officer in the instant case be termed as invalid sanction. The prosecution initiated against the appellant must fail for want of proper sanction."

##. In my opinion, this case is also distinguishable on facts for various reasons.

##. Firstly, in this case, the appellant was appointed by the District Development Officer on July 21, 1965. In the case before me, actual appointment was not made by the District Development Officer - rather, initial appointment was made by the District Collector, and by operation of law viz. enforcement of Panchayat Raj Act, two authorities viz. District Development Officer and Deputy District Development Officer were conferred concurrent powers of appointment and removal of Talati-cum-Mantri, a post which was held by the revisionist.

##. The second distinguishing feature in that case is that, there was subsequent authorization made in favour of Deputy District Development Officer for passing order for removal and also for making appointment to the post held by the appellant. It was on this fact held that, subsequent authorization cannot confer upon the Deputy District Development Officer power to remove him. In the case before me, there is no such authorization or delegation of power by the District Development Officer to the Deputy District Development Officer.

##. The third distinguishing feature is that, the Deputy

District Development Officer is subordinate in rank to District Development Officer but, since the appointment of the appellant was made by the District Development Officer, the officer subordinate to him viz. the Deputy District Development Officer, even on the face of authorization, could not have granted sanction, in as much as, the appointment was made by the District Development Officer.

##. In the case before me, there is no such authorization, nor actual appointment was made by the District Development Officer; and since, by operation of law, both the officers viz. District Development Officer and Deputy District Development Officer enjoy concurrent powers of appointment and removal of persons holding the post of Talati-cum-Mantri, the sanction could be granted by either of them.

##. I am unable to accept the contention of Shri Pardiwala that sub sec.3 of sec.19 could be applied only at the conclusion of the trial. The word "order" mentioned in sub clause (a) of clause 3 of sec.19 of the Act in its sweep includes the order of the nature passed by the Special Judge and such order is not to be interfered lightly in revision for the reasons stated above and also on the grounds mentioned in sec.19(3)(a) of the Act.

##. In the result, I do not find any illegality in the impugned order, as a result of which, the revision can not succeed. The revision is accordingly dismissed.

OCTOBER 18, 2000. [D.C. SRIVASTAVA, J.]

/sakkaf